

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

**ISMAEL HERNANDEZ PADILLA,
#356764,**

Petitioner,

v.

**WILLIAMS STEPHENS, Director
TDCJ-CID,**

Respondent.

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3:13-CV-1702-N-BK

**ORDER ACCEPTING FINDINGS AND RECOMMENDATION
OF THE UNITED STATES MAGISTRATE JUDGE**

The United States Magistrate Judge made Findings, Conclusions, and a Recommendation in this case. Plaintiff/Petitioner filed objections, and the District Court has made a *de novo* review of those portions of the proposed findings and recommendation to which objection was made. The objections are overruled, and the Court **ACCEPTS** the Findings, Conclusions, and Recommendation of the United States Magistrate Judge.

IT IS THEREFORE ORDERED that the petition for writ of habeas corpus is summarily **DISMISSED** without prejudice for lack of jurisdiction insofar as it challenges Petitioner's aggravated rape conviction, and with prejudice as barred by the one-year statute of limitations with respect to the aggravated robbery conviction.

IT IS FURTHER ORDERED that Petitioner is **WARNED**, as in Nos. 3:13-CV-02273-L-BN and 3:13-CV-1855-N-BN, that sanctions will be imposed against him if he files successive habeas applications without first obtaining permission from the Fifth Circuit, or files frivolous federal civil rights or habeas corpus claims challenging his aggravated robbery and aggravated rape convictions. In addition to monetary sanctions, Petitioner may be barred from filing any

other actions in federal district court without the permission of a United States district judge or magistrate judge.

Considering the record in this case and pursuant to Federal Rule of Appellate Procedure 22(b), Rule 11(a) of the Rules Governing Sections 2254 and 2255 Proceedings in the United States District Court, and 28 U.S.C. § 2253(c), the Court **DENIES** a certificate of appealability. The Court adopts and incorporates by reference the Magistrate Judge's Findings, Conclusions and Recommendation filed in this case in support of its finding that the petitioner has failed to show (1) that reasonable jurists would find this Court's "assessment of the constitutional claims debatable or wrong," or (2) that reasonable jurists would find "it debatable whether the petition states a valid claim of the denial of a constitutional right" and "debatable whether [this Court] was correct in its procedural ruling." *Slack v. McDaniel*, 529 U.S. 473, 484 (2000).¹

If petitioner files a notice of appeal,

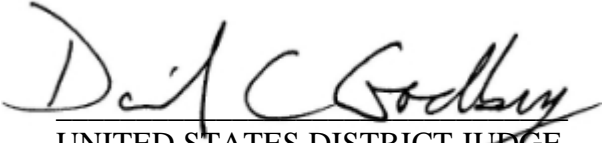
- (X) petitioner may proceed *in forma pauperis* on appeal.
- () petitioner must pay the \$455.00 appellate filing fee or submit a motion to proceed *in forma pauperis*.

¹ Rule 11 of the Rules Governing §§ 2254 and 2255 Proceedings, as amended effective on December 1, 2009, reads as follows:

(a) Certificate of Appealability. The district court must issue or deny a certificate of appealability when it enters a final order adverse to the applicant. Before entering the final order, the court may direct the parties to submit arguments on whether a certificate should issue. If the court issues a certificate, the court must state the specific issue or issues that satisfy the showing required by 28 U.S.C. § 2253(c)(2). If the court denies a certificate, the parties may not appeal the denial but may seek a certificate from the court of appeals under Federal Rule of Appellate Procedure 22. A motion to reconsider a denial does not extend the time to appeal.

(b) Time to Appeal. Federal Rule of Appellate Procedure 4(a) governs the time to appeal an order entered under these rules. A timely notice of appeal must be filed even if the district court issues a certificate of appealability.

SO ORDERED this 12th day of November, 2013.


UNITED STATES DISTRICT JUDGE